

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: RONALD BURGER

FAA Order No. 2001-9

Docket No. CP98NM0025

Served: September 6, 2001.

**ORDER CONSTRUING RESPONDENT'S NOTICE OF APPEAL
AS AN APPEAL BRIEF AND GIVING COMPLAINANT TIME
IN WHICH TO FILE A REPLY BRIEF¹**

On May 11, 2001, Administrative Law Judge Burton S. Kolko issued an order assessing a \$15,000 civil penalty against Respondent Ronald Burger. The law judge construed Mr. Burger's silence as a withdrawal of his request for hearing and as an admission of the allegations contained in the complaint. Consequently, the law judge held that a hearing was unnecessary because Mr. Burger had filed neither an answer to the FAA's complaint nor a reply to Complainant's motion to find Mr. Burger to be in default. Order Assessing Civil Penalty, dated May 11, 2001. Mr. Burger has filed a notice of appeal from the law judge's order but has failed to perfect that appeal by filing a separate appeal brief. Mr. Burger's notice of appeal shall be construed as both a notice of appeal and an appeal brief.

¹ The Administrator's civil penalty decisions, as well as indexes of the decisions, the Rules of Practice in Civil Penalty Actions, and other information, may be accessed via the Internet at the FAA Civil Penalty Program's website: <http://www.faa.gov/agc/cpwebsite>. Hawkins Publishing Company and Clark Boardman Callahan have published the Administrator's civil penalty decisions. The decisions may also be accessed through LEXIS, Westlaw, and Compuserve. Additional information is available on the FAA Civil Penalty Program website.

It is provided in Section 13.233(c) that "[u]nless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after ... service of the written initial decision on the party by filing an appeal brief with the FAA decisionmaker." 14 C.F.R. § 13.233(c). The law judge's written order assessing civil penalty was issued on May 11, 2001. Mr. Burger had 50 days under Section 13.233(c) plus an additional 5 days under the "mailing rule"² in which to file his appeal brief. Accordingly, his appeal brief was due no later than July 5, 2001. Mr. Burger did not file an appeal brief. However, in cases such as this one, in which the appellant filed a detailed notice of appeal, the Administrator has construed the notice of appeal as an appeal brief. *E.g., In the Matter of McDermott*, FAA Order No. 99-8 (August 31, 1999.)

If Complainant chooses to file a reply brief, its reply brief is due to be filed no later than 35 days from the date of service of this order.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON³
Manager, Adjudication Branch

Issued this 4th day of September, 2001.

² 14 C.F.R. § 13.211(e).

³ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.